

ASSEMBLY BILL

No. 620

Introduced by Assembly Member Leno

February 19, 2003

An act to amend Section 10229 of the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

AB 620, as introduced, Leno. Real estate.

Existing law, the Real Estate Law, requires the licensure of a person by the Real Estate Commissioner to engage in the business of, act in the capacity of, or advertise or assume to act as, a real estate broker or a real estate salesman within this state. Existing law requires a real estate broker to file certain information with the commissioner relative to the conducting of a transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, otherwise known as a multilender transaction, as specified. Existing law prohibits the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon real property senior to them, from exceeding certain percentages of the current market value of the real property.

This bill would define the term “current market value” for purposes of construction or rehabilitation loans as the value of the completed project if certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 10229 of the Business and Professions Code is amended to read:

10229. Any transaction that involves the sale of or offer to sell a series of notes secured directly by an interest in the same real property, or the sale of undivided interests in a note secured directly by real property equivalent to a series transaction, shall comply with all of the following:

(a) (1) A notice in the following form and containing the following information shall be filed with the commissioner within 30 days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10229 of the Business and Professions Code.

() Original Notice () Amended Notice

1. Name of Broker conducting transaction under Section 10229:

2. Broker license identification number: _____

3. List the month the fiscal year ends: _____

4. Broker's telephone number: _____

5. Firm name (if different from "1"):

6. Street address (main location):

and Street City State ZIP Code

7. Mailing address (if different from "6"):

8. Servicing Agent: Identify by name, address, and telephone number the person or entity who will act as the servicing agent in transactions pursuant to Section 10229 (including the undersigned Broker if that is the case):

9. Total number of multilender notes arranged: _____

10. Total number of interests sold to investors on the multilender's notes: _____

11. Inspection of trust account (before answering this question, review the provisions of paragraph (3) of subdivision (j) of Section 10229).

CHECK ONLY ONE OF THE FOLLOWING:

() The undersigned Broker is (or expects to be) required to file reports of inspection of its trust account(s) with the Real Estate Commissioner pursuant to paragraph (3) of subdivision (j) of Section 10229.

1 Amount of Multilender Payments Collected Last Fiscal Quarter: _____

3 Total Number of Investors Due Payments Last Fiscal Quarter: _____

5 () The undersigned Broker is NOT (or does NOT expect to be) required to
6 file reports of inspection of its trust account(s) with the Real Estate
7 Commissioner pursuant to paragraph (3) of subdivision (j) of Section
8 10229.

10 12. Signature. The contents of this notice are true and correct.

12 _____
13 Date

12 _____
13 Type Name of Broker

15 _____
16 Signature of Broker or of Designated Officer of
17 Corporate Broker

19 _____
20 Type Name of Person(s) Signing This Notice

22 NOTE: AN AMENDED NOTICE MUST BE FILED BY THE
23 BROKER WITHIN 30 DAYS OF ANY MATERIAL CHANGE
24 IN THE INFORMATION REQUIRED TO BE SET FORTH
25 HEREIN.

27 (2) A broker or person who becomes the servicing agent for
28 notes or interest sold pursuant to this section, upon which
29 payments due during any period of three consecutive months in the
30 aggregate exceed one hundred twenty-five thousand dollars
31 (\$125,000) or the number of persons entitled to the payments
32 exceeds 120, shall file the notice required by paragraph (1) with
33 the commissioner within 30 days after becoming the servicing
34 agent.

35 (b) All advertising employed for transactions under this section
36 shall (1) show the name of the broker and (2) comply with Section
37 10235 of the Business and Professions Code and Sections 260.302
38 and 2848 of Title 10 of the California Code of Regulations.
39 Brokers and their agents are cautioned that a reference to a
40 prospective investor that a transaction is conducted under this

1 section may be deemed misleading or deceptive if this
2 representation may reasonably be construed by the investor as an
3 implication of merit or approval of the transaction.

4 (c) The real property directly securing the notes or interests is
5 located in this state, the note or notes are not by their terms subject
6 to subordination to any subsequently created deed of trust upon the
7 real property, and the note or notes are not promotional notes
8 secured by liens on separate parcels of real property in one
9 subdivision or in contiguous subdivisions. For purposes of this
10 subdivision, a promotional note means a promissory note secured
11 by a trust deed, executed on unimproved real property or executed
12 after construction of an improvement of the property but before the
13 first purchase of the property as so improved, or executed as a
14 means of financing the first purchase of the property as so
15 improved, that is subordinate, or by its terms may become
16 subordinate, to any other trust deed on the property. However, the
17 term “promotional note” does not include either of the following:

18 (1) A note that was executed in excess of three years prior to
19 being offered for sale.

20 (2) A note secured by a first trust deed on real property in a
21 subdivision that evidences a bona fide loan made in connection
22 with the financing of the usual cost of the development in a
23 residential, commercial, or industrial building or buildings on the
24 property under a written agreement providing for the
25 disbursement of the loan funds as costs are incurred or in relation
26 to the progress of the work and providing for title insurance
27 ensuring the priority of the security as against mechanic’s and
28 materialmen’s liens or for the final disbursement of at least 10
29 percent of the loan funds after the expiration of the period for the
30 filing of mechanic’s and materialmen’s liens.

31 (d) The notes or interests are sold by or through a real estate
32 broker, as principal or agent. At the time the interests are originally
33 sold or assigned, neither the broker nor an affiliate of the broker
34 shall have an interest as owner, lessor, or developer of the property
35 securing the loan, or any contractual right to acquire, lease, or
36 develop the property securing the loan. This provision does not
37 prohibit a broker from conducting the following transactions if, in
38 either case, the disclosure statement furnished by the broker
39 pursuant to subdivision (k) discloses the interest of the broker or



1 affiliate in the transaction and the circumstances under which the
2 broker or affiliate acquired the interest:

3 (1) A transaction in which the broker or an affiliate of the
4 broker is acquiring the property pursuant to a foreclosure under,
5 or sale pursuant to, a deed of trust securing a note for which the
6 broker is the servicing agent or that the broker sold to the holder
7 or holders.

8 (2) A transaction in which the broker or an affiliate of the
9 broker is reselling from inventory property acquired by the broker
10 pursuant to a foreclosure under, or sale pursuant to, a deed of trust
11 securing a note for which the broker is the servicing agent or that
12 the broker sold to the holder or holders.

13 (e) (1) The notes or interests shall not be sold to more than 10
14 persons, each of whom meets one or both of the qualifications of
15 income or net worth set forth below and signs a statement, which
16 shall be retained by the broker for four years, conforming to the
17 following:

18
19 Transaction Identifier: _____

20
21 Name of Purchaser: _____ Date: _____

22
23 Check either one of the following, if true:

24 () My investment in the transaction does not exceed 10% of my net worth,
25 exclusive of home, furnishings, and automobiles.

26
27 () My investment in the transaction does not exceed 10% of my adjusted
28 gross income for federal income tax purposes for my last tax year or,
29 in the alternative, as estimated for the current year.

30
31 _____
32 Signature
33

34 (2) The number of offerees shall not be considered for the
35 purposes of this section.

36 (3) A husband and wife and their dependents, and an individual
37 and his or her dependents, shall be counted as one person.

38 (4) A retirement plan, trust, business trust, corporation, or other
39 entity that is wholly owned by an individual and the individual's
40 spouse or the individual's dependents, or any combination thereof,

shall not be counted separately from the individual, but the investments of these entities shall be aggregated with those of the individual for the purposes of the statement required by paragraph (1). If the investments of any entities are required to be aggregated under this subdivision, the adjusted gross income or net worth of these entities may also be aggregated with the net worth, income, or both, of the individual.

(5) The “institutional investors” enumerated in subdivision (i) of Section 25102 or subdivision (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto, shall not be counted.

(f) The notes or interests of the purchasers shall be identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest, and other incidents of being a lender, and the sale to each purchaser pursuant to this section shall be upon the same terms, subject to adjustment for the face or principal amount or percentage interest purchased and for interest earned or accrued. This subdivision does not preclude different selling prices for interests to the extent that these differences are reasonably related to changes in the market value of the loan occurring between the sales of these interests. The interest of each purchaser shall be recorded.

(g) (1) Except as provided in paragraph (2), the aggregate principal amount of the notes or interests sold, together with the unpaid principal amount of any encumbrances upon the real property senior thereto, shall not exceed the following percentages of the current market value of the real property, as determined in writing by the broker or appraiser pursuant to Section 10232.6, plus the amount for which the payment of principal and interest in excess of the percentage of current market value is insured for the benefit of the holders of the notes or interests by an insurer admitted to do business in this state by the Insurance Commissioner:

- | | | |
|-----|---|-----|
| (A) | Single-family residence, owner occupied | 80% |
| (B) | Single-family residence, not owner occupied | 75% |
| (C) | Commercial and income-producing properties | 65% |

- 1 (D) Single-family residentially zoned lot or parcel which has
 2 installed offsite improvements including drainage, curbs,
 3 gutters, sidewalks, paved roads, and utilities as mandated
 4 by the political subdivision having jurisdiction over the lot
 5 or parcel 65%
 6 (E) Land that has been zoned for (and if required, approved for
 7 subdivision as) commercial or residential development . . . 50%
 8 (F) Other real property 35%

9
 10 (2) The percentage amounts specified in paragraph (1) may be
 11 exceeded when and to the extent that the broker determines that the
 12 encumbrance of the property in excess of these percentages is
 13 reasonable and prudent considering all relevant factors pertaining
 14 to the real property. However, in no event shall the aggregate
 15 principal amount of the notes or interests sold, together with the
 16 unpaid principal amount of any encumbrances upon the property
 17 senior thereto, exceed 80 percent of the current fair market value
 18 of improved real property or 50 percent of the current fair market
 19 value of unimproved real property, except in the case of a
 20 single-family zoned lot or parcel as defined in paragraph (1),
 21 which shall not exceed 65 percent of the current fair market value
 22 of that lot or parcel, plus the amount insured as specified in
 23 paragraph (1). A written statement shall be prepared by the broker
 24 that sets forth the material considerations and facts that the broker
 25 relies upon for his or her determination, which shall be retained as
 26 a part of the broker's record of the transaction. Either a copy of the
 27 statement or the information contained therein shall be included in
 28 the disclosures required pursuant to subdivision (k).

29 (3) A copy of the appraisal or the broker's evaluation shall be
 30 delivered to each purchaser. The broker shall advise purchasers of
 31 their right to receive a copy. For purposes of this paragraph,
 32 "appraisal" means a written estimate of value based upon the
 33 assembling, analyzing, and reconciling of facts and value
 34 indicators for the real property in question. A broker shall not
 35 purport to make an appraisal unless the person so employed is
 36 qualified on the basis of special training, preparation, or
 37 experience.

38 (4) *For construction or rehabilitation loans, the term "current*
 39 *market value" may be deemed to be the value of the completed*
 40 *project if the following safeguards are met:*

1 (A) *An independent neutral third-party escrow account is used*
2 *for all deposits and disbursements.*

3 (B) *A comprehensive, detailed, draw schedule is used to ensure*
4 *proper and timely disbursements to allow for completion of the*
5 *project.*

6 (C) *The disbursement draws from the escrow account are based*
7 *on verification from an independent qualified person who certifies*
8 *that the work completed to date meets the related codes and*
9 *standards and that the draws were made in accordance with the*
10 *construction contract and draw schedule.*

11 (D) *An appraisal is completed by a qualified and licensed*
12 *appraiser in accordance with the Uniform Standards of*
13 *Professional Appraisal Practice (USPAP).*

14 (h) The documentation of the transaction shall require that (1)
15 a default upon any interest or note is a default upon all interests or
16 notes and (2) the holders of more than 50 percent of the record
17 beneficial interests of the notes or interests may govern the actions
18 to be taken on behalf of all holders in accordance with Section
19 2941.9 of the Civil Code in the event of default or foreclosure for
20 matters that require direction or approval of the holders, including
21 designation of the broker, servicing agent, or other person acting
22 on their behalf, and the sale, encumbrance, or lease of real property
23 owned by the holders resulting from foreclosure or receipt of a
24 deed in lieu of foreclosure. The terms called for by this subdivision
25 may be included in the deed of trust, in the assignment of interests,
26 or in any other documentation as is necessary or appropriate to
27 make them binding on the parties.

28 (i) (1) The broker shall not accept any purchase or loan funds
29 or other consideration from a prospective lender or purchaser, or
30 directly or indirectly cause the funds or other consideration to be
31 deposited in an escrow or trust account, except as to a specific loan
32 or note secured by a deed of trust that the broker owns, is
33 authorized to negotiate, or is unconditionally obligated to buy.

34 (2) All funds received by the broker from the purchasers or
35 lenders shall be handled in accordance with Section 10145 for
36 disbursement to the persons thereto entitled upon recordation of
37 the interests of the purchasers or lenders in the note and deed of
38 trust. No provision of this section shall be construed as modifying
39 or superseding applicable law regulating the escrowholder in any
40 transaction or the handling of the escrow account.

1 (3) The books and records of the broker or servicing agent, or
2 both, shall be maintained in a manner that readily identifies
3 transactions under this section and the receipt and disbursement of
4 funds in connection with these transactions.

5 (4) If required by paragraph (3) of subdivision (j), the review
6 by the independent certified public accountant shall include a
7 sample of transactions, as reflected in the records of the trust
8 account required pursuant to paragraph (1) of subdivision (j), and
9 the bank statements and supporting documents. These documents
10 shall be reviewed for compliance with this section with respect to
11 the handling and distribution of funds. The sample shall be
12 selected at random by the accountant from all these transactions
13 and shall consist of the following: (A) three sales made or 5 percent
14 of the sales made pursuant to this section during the period for
15 which the examination is conducted, whichever is greater, and (B)
16 10 payments processed or 2 percent of payments processed under
17 this section during the period for which the examination is
18 conducted, whichever is greater.

19 (5) For the purposes of this subdivision, the transaction that
20 constitutes a “sale” is the series of transactions by which a series
21 of notes of a maker, or the interests in the note of a maker, are sold
22 or issued to their various purchasers under this section, including
23 all receipts and disbursements in that process of funds received
24 from the purchasers or lenders. The transaction that constitutes a
25 “payment,” for the purposes of this subdivision, is the receipt of
26 a payment from the person obligated on the note or from some
27 other person on behalf of the person so obligated, including the
28 broker or servicing agent, and the distribution of that payment to
29 the persons entitled thereto. If a payment involves an advance paid
30 by the broker or servicing agent as the result of a dishonored check,
31 the inspection shall identify the source of funds from which the
32 payment was made or, in the alternative, the steps that are
33 reasonably necessary to determine that there was not a
34 disbursement of trust funds. The accountant shall inspect for
35 compliance with the following specific provisions of this section:
36 paragraphs (1), (2), and (3) of subdivision (i) and paragraphs (1)
37 and (2) of subdivision (j).

38 (6) Within 30 days of the close of the period for which the
39 report is made, or within any additional time as the commissioner
40 may in writing allow in a particular case, the accountant shall

1 forward to the broker or servicing agent, as the case may be, and
 2 to the commissioner, the report of the accountant, stating that the
 3 inspection was performed in accordance with this section, listing
 4 the sales and the payments examined, specifying the nature of the
 5 deficiencies, if any, noted by the accountant with respect to each
 6 sale or payment, together with any further information as the
 7 accountant may wish to include, such as corrective steps taken
 8 with respect to any deficiency so noted, or stating that no
 9 deficiencies were observed. If the broker meets the threshold
 10 criteria of Section 10232, the report of the accountant shall be
 11 submitted as part of the quarterly reports required under Section
 12 10232.25.

13 (j) The notes or interests shall be sold subject to a written
 14 agreement that obligates a licensed real estate broker, or a person
 15 exempted from the licensing requirement for real estate brokers
 16 under Chapter 3 (commencing with Section 10130) of Part 1 of
 17 Division 4, to act as agent for the purchasers or lenders to service
 18 the note or notes and deed of trust, including the receipt and
 19 transmission of payments and the institution of foreclosure
 20 proceedings in the event of a default. A copy of this servicing
 21 agreement shall be delivered to each purchaser. The broker shall
 22 offer to the lenders or purchasers the services of the broker or one
 23 or more affiliates of the broker, or both, as servicing agent for each
 24 transaction conducted pursuant to this section. The agreement
 25 shall require all of the following:

26 (1) (A) That payments received on the note or notes be
 27 deposited immediately to a trust account maintained in accordance
 28 with this section and with the provisions for trust accounts of
 29 licensed real estate brokers contained in Section 10145 and Article
 30 15 (commencing with Section 2830.1) of Chapter 6 of Title 10 of
 31 the California Code of Regulations.

32 (B) That payments deposited pursuant to subparagraph (A)
 33 shall not be commingled with the assets of the servicing agent or
 34 used for any transaction other than the transaction for which the
 35 funds are received.

36 (2) That payments received on the note or notes shall be
 37 transmitted to the purchasers or lenders pro rata according to their
 38 respective interests within 25 days after receipt thereof by the
 39 agent. If the source for the payment is not the maker of the note,
 40 the agent shall inform the purchasers or lenders of the source for



1 payment. A broker or servicing agent who transmits to the
2 purchaser or lenders the broker's or servicing agent's own funds
3 to cover payments due from the borrower but unpaid as a result of
4 a dishonored check may recover the amount of the advances from
5 the trust fund when the past due payment is received. However,
6 this section does not authorize the broker, servicing agent, or any
7 other person to issue, or to engage in any practice constituting, any
8 guarantee or to engage in the practice of advancing payments on
9 behalf of the borrower.

10 (3) If the broker or person who is or becomes the servicing
11 agent for notes or interests sold pursuant to this section upon which
12 the payments due during any period of three consecutive months
13 in the aggregate exceed one hundred twenty-five thousand dollars
14 (\$125,000) or the number of persons entitled to the payments
15 exceeds 120, the trust account or accounts of that broker or affiliate
16 shall be inspected by an independent certified public accountant at
17 no less than three-month intervals during the time the volume is
18 maintained. Within 30 days after the close of the period for which
19 the review is made, the report of the accountant shall be forwarded
20 as provided in paragraph (5) of subdivision (i). If the broker is
21 required to file an annual report pursuant to subdivision (n) or
22 Section 10232.2, the quarterly report pursuant to this subdivision
23 need not be filed for the last quarter of the year for which the annual
24 report is made. For the purposes of this subdivision, an affiliate of
25 a broker is any person controlled by, controlling, or under common
26 control with the broker.

27 (4) Unless the servicing agent will receive notice pursuant to
28 Section 2924b of the Civil Code, the servicing agent shall file a
29 request for notice of default upon any prior encumbrances and
30 promptly notify the purchasers or lenders of any default on the
31 prior encumbrances or on the note or notes subject to the servicing
32 agreement.

33 (5) The servicing agent shall promptly forward copies of the
34 following to each purchaser or lender:

35 (A) Any notice of trustee sale filed on behalf of the purchasers
36 or lenders.

37 (B) Any request for reconveyance of the deed of trust received
38 on behalf of the purchasers or lenders.

39 (k) The broker shall disclose in writing to each purchaser or
40 lender the material facts concerning the transaction on a disclosure



1 form adopted or approved by the commissioner pursuant to
2 Section 10232.5, subject to the following:

3 (1) The disclosure form shall include a description of the terms
4 upon which the note and deed of trust are being sold, including the
5 terms of the undivided interests being offered therein, including
6 the following:

7 (A) In the case of the sale of an existing note:

8 (i) The aggregate sale price of the note.

9 (ii) The percent of the premium over or discount from the
10 principal balance plus accrued but unpaid interest.

11 (iii) The effective rate of return to the purchasers if the note is
12 paid according to its terms.

13 (iv) The name and address of the escrowholder for the
14 transaction.

15 (v) A description of, and the estimated amount of, each cost
16 payable by the seller in connection with the sale and a description
17 of, and the estimated amount of, each cost payable by the
18 purchasers in connection with the sale.

19 (B) In the case of the origination of a note:

20 (i) The name and address of the escrowholder for the
21 transaction.

22 (ii) The anticipated closing date.

23 (iii) A description of, and the estimated amount of, each cost
24 payable by the borrower in connection with the loan and a
25 description of, and the estimated amount of, each cost payable by
26 the lenders in connection with the loan.

27 (2) A copy of the written statement or information contained
28 therein, as required by paragraph (2) of subdivision (g), shall be
29 included in the disclosure form.

30 (3) Any interest of the broker or affiliate in the transaction, as
31 described in subdivision (d), shall be included with the disclosure
32 form.

33 (4) When the particular circumstances of a transaction make
34 information not specified in the disclosure form material or
35 essential to keep the information provided in the form from being
36 misleading, and the other information is known to the broker, the
37 other information shall also be provided by the broker.

38 (l) The broker or servicing agent shall furnish any purchaser of
39 a note or interest, upon request, with the names and addresses of
40 the purchasers of the other notes or interests in the loan.



1 (m) No agreement in connection with a transaction covered by
2 this section shall grant to the real estate broker, the servicing agent,
3 or any affiliate of the broker or agent the option or election to
4 acquire the interests of the purchasers or lenders or to acquire the
5 real property securing the interests. This subdivision shall not
6 prohibit the broker or affiliate from acquiring the interests, with
7 the consent of the purchasers or lenders whose interests are being
8 purchased, or the property, with the consent of the purchasers or
9 lenders, if the consent is given at the time of the acquisition.

10 (n) Each broker who conducts transactions under this section,
11 or broker or person who becomes the servicing agent for notes or
12 interest sold pursuant to this section, who meets the criteria of
13 paragraph (3) of subdivision (j) shall file with the commissioner
14 an annual report of a review of its trust account. The report shall
15 be prepared and filed in accordance with subdivision (a) of Section
16 10232.2 and the rules and procedures thereunder of the
17 commissioner. That report shall cover the broker's transactions
18 under this section and, if the broker also meets the threshold
19 criteria set forth in Section 10232, the broker's transactions subject
20 to that section shall be included as well.

21 (o) Each broker conducting transactions pursuant to this
22 section, or broker or person who becomes the servicing agent for
23 notes or interest sold pursuant to this section, who meets the
24 criteria of paragraph (3) of subdivision (j) shall file with the
25 commissioner a report of the transactions that is prepared in
26 accordance with subdivision (c) of Section 10232.2. If the broker
27 also meets the threshold criteria of Section 10232, the report shall
28 include the transactions subject to that section as well. This report
29 shall be confidential pursuant to subdivision (f) of Section
30 10232.2.

31 (p) The jurisdiction of the Commissioner of Corporations
32 under the Corporate Securities Law of 1968 shall be neither
33 limited nor expanded by this section. Nothing in this section shall
34 be construed to supersede or restrict the application of the
35 Corporate Securities Law of 1968. A transaction under this section
36 shall not be construed to be a transaction involving the issuance of
37 securities subject to authorization by the Real Estate
38 Commissioner under subdivision (e) of Section 25100 of the
39 Corporations Code.



1 (q) Nothing in this section shall be construed to change the
2 agency relationships between the parties where they exist or limit
3 in any manner the fiduciary duty of brokers to borrowers, lenders,
4 and purchasers of notes or interests in transactions subject to this
5 section.

6 (r) For the purposes of this section, the following definitions
7 shall apply:

8 (1) “Broker” means a person licensed as a broker under this
9 part.

10 (2) “Affiliate” means a person controlled by, controlling, or
11 under common control with, the broker.

12 (3) “Servicing agent” means the real estate broker or person
13 exempted from the licensing requirements for real estate brokers
14 under Chapter 3 (commencing with Section 10130) of Part 1 of
15 Division 4, to act as agent for the purchasers or lenders to service
16 the notes and deeds of trust, including the handling the receipt and
17 transmission of payments and the institution of foreclosure
18 proceedings in the event of a default.

19 (4) Except as provided in paragraph (4) of subdivision (i), the
20 terms “sale” and “offer to sell,” shall have the same meaning as
21 set forth in Section 25017 of the Corporations Code and include
22 the acts of negotiating and arranging the transaction.

23 (s) (1) If any person other than a real estate broker makes or
24 keeps any of the books, accounts, or other records maintained in
25 connection with a transaction described in this section, the
26 provisions of this section and of any regulation or order issued
27 under this section shall apply to the person with respect to the
28 performance of those services and with respect to those books,
29 accounts, and other records to the same extent as if the person were
30 the broker.

31 (2) If any person other than an affiliate of a broker makes or
32 keeps any of the books, accounts, or other records maintained in
33 connection with a transaction described in this section, or in the
34 case of an affiliate other than a parent or subsidiary of the broker,
35 the provisions of this section and of any regulation or order issued
36 under this section shall apply to the person with respect to those
37 books, accounts, and other records to the same extent as if the
38 person were the affiliate.

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